. No. 325 **HOUSE**

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to update public charities law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	8th Suffolk
Martha Coakley	
Linda Dorcena Forry	12th Suffolk
Kevin Aguiar	7th Bristol
Katherine Clark	32nd Middlesex
Cory Atkins	14th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO UPDATE PUBLIC CHARITIES LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. Section 8E of chapter 12 of the General Laws, as appearing in the 2006 Official Edition, is
- 2 hereby amended by striking out, following the words: "association or instrument of trust" in line 12, the
- 3 following word "and"
- 4 Provided, further, that Section 8E of chapter 12, as so appearing, is hereby amended by inserting after the
- 5 words "a true copy of its constitution and by laws," in line 12, the following words: "and a one time
- 6 initial registration fee of \$100,"
- 7 Provided, further, that Section 8E of chapter 12, as so appearing, is hereby amended by striking out the
- 8 last paragraph and inserting in place thereof the following:
- 9 If any public charity fails to comply with the requirements of this section, the director shall notify the
- delinquent public charity, or any responsible officer or agent of such public charity, by mailing a notice
- thereof to its last known address or that of any such responsible officer or agent. Such notice mailed by
- the director shall be deemed a sufficient notice, and a certificate of the person mailing such notice that it
- has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be
- 14 admissible in any court of the commonwealth as to the facts contained therein. If a complete registration
- is not filed within thirty days of the day such notice is mailed, the director may assess a civil penalty
- against the public charity and may further assess a separate civil penalty against any responsible officer or
- agent receiving such notice who fails, without good cause, to cause the filing of a complete registration.
- 18 Such civil penalties shall each be in the amount of fifty dollars per day for each day subsequent to the end
- of such thirty day period until such report is filed; provided, however, that the maximum penalty for
- 20 failure to register shall be no greater than ten thousand dollars. Any public charity, or the responsible
- 21 officer or agent of a public charity, aggrieved by the imposition of a civil penalty pursuant to this section
- 22 may bring a civil action in the nature of certiorari pursuant to section 4 of chapter 249; provided,
- however, that such action shall be commenced within 60 days of the date of the notice of the civil penalty.
- 24 If any public charity, or the responsible officer or agent of a public charity shall fail to pay any civil
- 25 penalty provided herein within 21 days of the date of imposition of such penalty, excluding any time

- during which judicial review pursuant to section 4 of chapter 249 remains pending, the division may
- initiate a civil action in the superior court to enforce such penalty or to obtain any other relief so required.
- 28 **SECTION 2.** Section 8F of chapter 12 of the General Laws, as so appearing, is hereby amended by
- inserting after the words "if more than five hundred thousand dollars" in lines 43-44, the following words:
- 30 "but not more than one million dollars; (e) five hundred dollars, if more than one million but not more
- 31 than ten million; (f) one thousand dollars, if more that ten million but not more than one hundred million;
- 32 (g) two thousand dollars, if more than one hundred million."
- 33 **SECTION 3.** Section 8F of chapter 12 of the General Laws, as so appearing, is hereby amended by
- 34 striking the last paragraph and inserting in place thereof the following:
- 35 If any public charity fails to file a written report for any year, the director shall notify the delinquent
- public charity, or the responsible officer or agent of such public charity, by mailing a notice thereof to its
- 37 last known address or that of any responsible officer or agent. Such notice mailed by the director shall be
- deemed a sufficient notice, and a certificate of the person mailing such notice that it has been mailed in
- 39 accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any
- 40 court of the commonwealth as to the facts contained therein. If a complete report is not filed within thirty
- days of the day such notice is mailed, the director may assess a civil penalty against the public charity and
- may further assess a separate civil penalty against any responsible officer or agent receiving such notice
- 43 who fails, without good cause, to cause the filing of a complete report. Such civil penalties shall each be
- in the amount of fifty dollars per day for each day subsequent to end of such thirty day period until a
- complete report is filed; provided, however, that the maximum penalties assessed with respect to any
- 46 report shall be no greater than ten thousand dollars. Any public charity, or the responsible officer or agent
- of a public charity, aggrieved by the imposition of a civil penalty pursuant to this section may bring a civil
- 48 action in the nature of certiorari pursuant to section 4 of chapter 249; provided, however, that such action
- shall be commenced within 60 days of the date of the assessment of the civil penalty. If any public
- charity, or the responsible officer or agent of a public charity shall fail to pay any civil penalty provided
- 51 herein within 21 days of the date of imposition of such penalty, excluding any time during which judicial
- review pursuant to section 4 of chapter 249 remains pending, the attorney general may initiate a civil
- action in the superior court to enforce such penalty or to obtain any other relief so required.
- Any public charity, or any officer or agent of a public charity, who willfully makes, executes or files a
- 55 report false in any material representation shall be punished by a fine of not more than five thousand
- dollars or by imprisonment for not more than one year or both.
- 57 **SECTION 4.** Section 21 of chapter 68 of the General Laws, as appearing in the 2006 official edition, is
- 58 hereby repealed.
- 59 **SECTION 5.** Chapter 68 of the General Laws is hereby amended by striking out section 23, as so
- appearing, and inserting in place thereof the following section:
- 61 **Section 23.** Solicitation disclosures
- 62 Section 23. All solicitations by professional solicitors and all solicitations by commercial co-
- venturers shall contain, at the time of solicitation, the following disclosures: (1) the name,

- address and telephone number of the charitable organization and a description of how the
- contributions raised by the solicitation will be utilized for charitable purposes, or if there is no
- 66 charitable organization, the name, address and telephone number of the professional solicitor or
- 67 commercial co-venturer and a description of how the contributions raised by the solicitation will
- be utilized for charitable purposes; (2) the statement that the solicitation is being conducted by a
- 69 "paid fund-raiser"; and (3) such other disclosures as required by relevant rules and regulations
- 70 promulgated under section twenty-nine. If the solicitation is for advertising, the disclosure shall
- also include the geographic distribution and the circulation of the publication in which the
- 72 advertising will appear.
- 73 **SECTION 6**. Section 24 of chapter 68 of the General Laws, as so appearing, is hereby amended by
- striking out, in lines 9-11, the words "(a) professional solicitor, three hundred dollars; (b) professional
- fund-raising counsel, two hundred dollars; (c) commercial co-venturer, fifty dollars." and inserting in
- 76 place thereof the following words: "(i) professional solicitor, one thousand dollars; (ii) professional fund-
- 77 raising counsel, four hundred dollars; (iii) commercial co-venturer, two hundred dollars."
- 78 **SECTION 7.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby amended by
- striking out the word "ten", in line 17, and inserting in place thereof the following word: "twenty five"
- 80 **SECTION 8.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby amended by
- inserting after the words "exceed the sum of said bond." in line 27, the following words: "A professional
- 82 solicitor shall conduct solicitations only by or through persons who are covered (i) by a consolidated bond
- under which such professional solicitor is the principal obligor, or (ii) by a bond under which such person
- 84 is both the principal obligor and independently registered with the division as a professional solicitor
- under clause (a) above."
- 86 **SECTION 9.** Section 32 of chapter 68 of the General Laws, as so appearing, is hereby amended by
- 87 inserting after subsection (e) the following subsection:
- 88 (f) In addition to any remedies or actions authorized or permitted pursuant to subsections (a) through (e)
- of this section, if any charitable organization, professional fundraising counsel, commercial co-venturer or
- 90 professional solicitor violates one or more applicable provisions of sections 19 through 35 of chapter 68,
- 91 the director shall notify the delinquent charitable organization, professional fundraising counsel,
- 92 commercial co-venturer, professional solicitor, or any responsible officer or agent of any of the foregoing
- 93 by mailing a notice thereof to its last known address or that of any such responsible officer or agent. Such
- notice mailed by the division shall be deemed a sufficient notice, and a certificate of the person mailing
- 95 such notice that it has been mailed in accordance with this section shall be deemed prima facie evidence
- 96 thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. If the
- 97 charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor
- 98 fails to correct any such violation within thirty days of the day such notice is mailed, the director may
- 99 assess a civil penalty against the charitable organization, professional fundraising counsel, commercial
- 100 co-venturer or professional solicitor and may further assess a separate civil penalty against any
- 101 responsible officer or agent receiving such notice who fails, without good cause, to cause the violation to
- be corrected. Such civil penalty shall be in the amount of fifty dollars per day for each day subsequent to
- the end of such thirty day period until such violation is cured; provided, however, that the maximum
- penalty shall be no greater than ten thousand dollars. Any charitable organization, professional

fundraising counsel, commercial co-venturer, professional solicitor, or responsible officer or agent aggrieved by the imposition of a civil penalty pursuant to this section may bring a civil action in the nature of certiorari pursuant to section 4 of chapter 249; provided, however, that such action shall be commenced within 60 days of the date of the notice of the civil penalty. If any charitable organization, professional fundraising counsel, commercial co-venturer, professional solicitor, or responsible officer or agent shall fail to pay any civil penalty provided herein within 21 days of the date of imposition of such penalty, excluding any time during which judicial review pursuant to section 4 of chapter 249 remains pending, the division may initiate a civil action in the superior court to enforce such penalty or to obtain any other relief so required.

- SECTION 10. Section 11A of chapter 180 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking the first paragraph and inserting in place thereof the following:
 - A charitable corporation constituting a public charity organized under the provisions of general or special law, which desires to voluntarily windup and close its affairs, may authorize its dissolution in accordance with the provisions of this section. The provisions of this section shall constitute the sole method for the voluntary dissolution of any such charitable corporation.
 - (a) Petition for Dissolution. A petition for dissolution shall be authorized by vote of a majority of the corporation's board of directors entitled to vote thereon, provided, however, that if the corporation has one or more classes of members, the corporation may in its articles of corporation, in a bylaw adopted by the incorporators pursuant to section three or in a bylaw adopted by the members, assign the power of authorization to the members acting by majority vote of the members entitled to vote thereon or provide that the exercise of such power shall be subject to approval by the members.
 - (b) No Net Assets. If the corporation has no remaining assets, the petition for dissolution shall be submitted to the division of public charities of the office of the attorney general setting forth in substance the grounds of the application for dissolution together such forms, affidavits and information as the division may from time to time prescribe. If the division is satisfied that such corporation has or will become inactive and that its dissolution would be in the public interest, the division may approve the dissolution of the corporation.
 - (c) Net Assets. If the corporation has remaining assets, the petition for its dissolution shall be filed in the supreme judicial court setting forth in substance the grounds of the application for dissolution and requesting the court to authorize the administration of its funds for such similar public charitable purposes as the court may determine. The supreme judicial court may by rule or order provide that such petition and court authorization are not required for dissolutions approved by the division upon receipt of such forms, affidavits and information as the division may require if the corporation has net assets no greater than such amount as the court may provide in said rule or order or in such other situations as the court may so provide.